

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED  
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CLERK  
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Scott Huminski,

Plaintiff,

v.

Rutland City Police  
Department, et al.,

Defendants.

CIVIL ACTION

DOCKET NO. 1:99-cv-160

**MOTION BY PLAINTIFF SCOTT HUMINSKI**  
**FOR PRELIMINARY INJUNCTION**

Pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, Scott Huminski, plaintiff, by and through his counsel, respectfully moves this Court for a preliminary injunction prohibiting defendants from enforcing any Notice of Trespass cited in plaintiff's complaint, including the notices of trespass dated May 24, 1999, May 27, 1999, or any such future trespass notices until the Court renders a decision based on the merits of this case. A Consolidated Memorandum of Law Supporting Plaintiff's Constitutional Claims ("Memorandum") is being filed concurrently with this motion. A proposed preliminary injunction order is attached hereto.

In the Second Circuit, a preliminary injunction may be granted when the party seeking the injunction establishes that:

- (1) absent injunctive relief, the movant will suffer irreparable harm, and
- (2) either (a) the movant is likely to succeed on the merits, or (b) there are sufficiently serious

questions going to the merits to make them a fair ground for litigation, and the balance of the hardships tips decidedly in favor of the moving party. <sup>1/</sup>

While Huminski need satisfy only the first element and *either* prong of the second element as set forth above, Huminski here satisfies all three of the listed criteria.

(1) Irreparable Harm

In the context of a preliminary injunction motion, "[v]iolations of First Amendment rights are commonly considered irreparable injuries." *Huminski v. Rutland City Police Dept.*, 221 F.3d 357,360 (2d Cir. 2000) (quoting *Bery v. City of New York*, 97 F.3d 689, 693 (2d Cir. 1996), and citing *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412, 426 (2d Cir. 1995) ("the loss of First Amendment freedoms, even for minimal periods of time, constitutes irreparable injury")). More importantly, the court noted that, under the facts set forth in the present Complaint, "irreparable injury" is "presumable." *Id.* As Plaintiff asserts significant and wholesale violations of his First Amendment rights, the showing of irreparable harm is satisfied.

(2) (a) Likelihood of Success on the Merits

As set forth in the Memorandum, Huminski satisfies this element as well. The rights violated by the defendants are well-established constitutional rights that deserve First Amendment protection. Memorandum at 8-18. The actions by the defendants in this case were plainly overbroad and abrogated Huminski's ability to criticize public officials, to speak in the vicinity of a courthouse and to

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<sup>1/</sup> See *Wright v. Giuliani*, 230 F.3d 543, 547 (2d Cir. 2000); *Charette v. Town of Oyster Bay*, 159 F.3d 749, 754 (2d Cir. 1998); *Buffalo Forge Co. v. Ampco-Pittsburgh Corp.*, 638 F.2d 568 (2d Cir. 1981).

attend judicial proceedings. Moreover, the Second Circuit, in finding that the allegations in Huminski's Complaint may give rise to a presumption of irreparable harm, all but ratified the meritoriousness of Huminski's constitutional claims.

(2) (b) Serious Questions Going to the Merits/Balance of Hardships

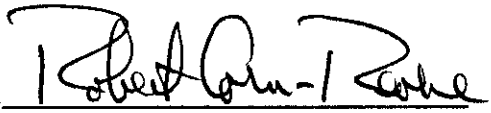
The harm that Huminski has suffered, continues to suffer and would suffer from the denial of this motion, *i.e.*, continued restriction of constitutionally protected expression, is much greater than any alleged harm the defendants would suffer if the motion was granted. Indeed, Huminski has never engaged, nor has he been accused of engaging, in any form of violent or disruptive conduct, loud or boisterous behavior, public nuisance, obscene or vulgar expression, "fighting words," or any other conduct tending in any way to interfere with the business of the Rutland District Court. Thus, while the harm to Huminski is significant, the potential harm to defendants is nonexistent. In addition, the claims raised by the plaintiff involve serious questions of constitutional law, and the plaintiff is prepared to come forward with sufficient preliminary proof to warrant the issuance of a preliminary injunction.

WHEREFORE, Scott Huminski respectfully requests that this Court enter his order granting a preliminary injunction.

Date: February 2, 2001

Respectfully Submitted,

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**UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT**

Scott Huminski,	)	
Plaintiff,	)	
	)	CIVIL ACTION
v.	)	
	)	
Rutland City Police	)	DOCKET NO. 1:99-cv-160
Department, et al.,	)	
Defendants.	)	

**ORDER GRANTING MOTION BY PLAINTIFF  
SCOTT HUMINSKI FOR PRELIMINARY INJUNCTION**

Upon consideration of the Motion For Preliminary Injunction ("Motion") filed herein by Scott Huminski, plaintiff, and any opposition thereto, and it appearing to the Court that good reason exists to grant the Motion, it is this \_\_\_\_ day of \_\_\_\_\_, 2001, by the United States District Court for the District of Vermont:

ORDERED, that the Motion is hereby granted; and it is further

ORDERED, that Scott Huminski, the plaintiff in this action, is authorized to enter upon any and all State property; and it is further

ORDERED, that all named defendants must refrain from executing and enforcing any notice against trespass against plaintiff for exercising his right to report on and criticize public officials in the state courts of Vermont, including the Notice Against Trespass dated May 24, 1999, the Notice Against Trespass dated May 27, 1999, or any future such trespass notices, until the Court renders a decision on the merits of the case.

Date: \_\_\_\_\_

\_\_\_\_\_  
United States District Court Judge

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 2nd day of February, 2001, copies of the foregoing Motion for Preliminary Injunction were mailed, first class postage prepaid, to:

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